

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DAVID KROGER,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Commissioner, Social
Security Administration,

Defendant.

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CIVIL ACTION H-06-0457

MEMORANDUM AND RECOMMENDATION

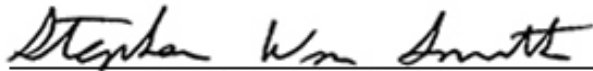
On March 2, 2007, the district court issued a final judgment (Dkt. 17) in favor of plaintiff, reversing the Commissioner's decision denying Kroger disability benefits and remanding this case pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with the court's ruling granting plaintiff's motion for summary judgment.

This matter is now before the court on plaintiff's unopposed motion for attorney's fees (Dkts. 18, 19). Plaintiff is entitled to attorney fees under 28 U.S.C. § 2412(d) because he is the prevailing party in this action. *Shalala v. Schaefer*, 509 U.S. 292, 302-03 (1993). His motion is timely. 28 U.S.C. § 2412(d)(1)(B). The fees requested by counsel are reasonable and the rate is appropriate under the Equal Access to Justice Act provision allowing for cost of living increases to the statutorily

permitted rate of \$125.00 per hour. 28 U.S.C. § 2412(d)(2)(A)(ii). Therefore, the court recommends that judgment be entered in favor of plaintiff's counsel, Marc Whitehead, in the total sum of \$5,826.76 as his reasonable and necessary attorney's fees.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. PRO. 72.

Signed at Houston, Texas, on June 19, 2007.



Stephen Wm Smith
United States Magistrate Judge